IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1913 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

ISRAIL & ISRAR PAHELVAN NAZIRAHMED SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

Mrs S D Talati, AGP for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 24/04/99

ORAL JUDGEMENT

The petitioner, through this writ petition under Article 226 of the Constitution of India, has challenged the detention order dated 19.2.1997 passed by the Commissioner of Police, Ahmedabad under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'PASA' Act'), and has prayed for quashing of the aforesaid order with further

prayer that he may be released forthwith from the illegal detention.

2. Brief facts indicated in the grounds of detention formulated on 19.2.1999 are as under:

The detaining authority considered 20 registered offences under the Bombay Prohibition Act against the petitioner and also seems to have considered statement of two witnesses and from the aforesaid material he was satisfied that the petitioner is a bootlegger and his activities were prejudicial for maintenance of public order. Thus, in the first instance, the detention order was passed because the petitioner is a bootlegger and his activities were prejudicial for maintenance of public order. Secondly, the detaining authority seems to have considered two offences under various sections of Indian Penal Code, registered against the petitioner and further seems to have considered statements of two confidential witnesses. On the aforesaid material, he was satisfied subjectively that the petitioner is a dangerous person and his activities were prejudicial for maintenance of public order. Thus, apparently the detention order was passed under Sections 2(b) and 2(c) of the PASA Act. Alternative remedies were also considered by the detaining authority which in his mind, were ineffective to control the objectionable activities of the petitioner creating situations prejudicial for maintenance of public order.

3. The aforesaid order of detention has been challenged by the learned Counsel for the petitioner on as many as six grounds. The contention of Mrs. S D Talati, learned AGP, on the other hand, is that the detention order is perfectly in accordance with law and there has been no delay in dealing with the representations sent by the learned Counsel for the detenu as well as by the brother of the detenu.

4. One of the grounds of attack against the impugned order is that on the relevant date when the detention order was passed, the petitioner was in judicial custody in all twenty two cases including IPC cases as such there was no necessity for passing detention order. The learned Counsel has assailed the detention order and subjective satisfaction of the detaining authority on the ground of non-application of mind. It has been argued that since bail application was not moved at that time, observations of the detaining authority that as and when the petitioner is enlarged on bail in those cases, he may repeat his criminal activities is imaginary and

untenable. However, this is not a ground for quashing the impugned order. The only requirement of law is that the detaining authority should be aware that the petitioner was in judicial custody when the impugned order was being passed. This awareness is reflected from the grounds of detention. Keeping in view the twenty cases under Bombay Prohibition Act and two cases under various sections of IPC, the detaining authority was justified in reaching subjective satisfaction that as and when the petitioner is released, he may commit similar offences. After all the twenty two cases were not insignificant number of cases to the credit of the petitioner. Thus on this ground the subjective satisfaction of the detaining authority cannot be assailed.

5. Another contention has been that the detention order suffers from the vice of non-application of mind by the detaining authority. Special reference was made to the observation of the detaining authority in the grounds of detention that C.R. No.3189/97 under section 323 etc. of the IPC does not fall within the provisions of PASA Act. It may be stated that collaterally these sections could have been considered for the purposes of reaching subjective satisfaction whether the petitioner is a dangerous person or not, but it cannot be said that if there was some confusion in the mind of the detaining authority it has rendered the detention order illegal and that it is the result of non-application of mind by the detaining authority that such observation was made in the grounds of detention. Consequently on this ground the impugned order cannot be quashed.

6. From the grounds of detention, it is manifest that there were twenty offences registered against the petitioner under the Bombay Prohibition Act. Two confidential witnesses have also stated about the participation of the petitioner in bootlegging activity. The detaining authority was, therefore, rightly subjectively satisfied that the petitioner is a bootlegger and this subjective satisfaction does not require any interference.

7. So far as the activities of the petitioner as dangerous person are concerned, the grounds of detention are very clear. However, for a person to be branded as dangerous person, requirement of law is that there should be repetition of commission of offences punishable under Chapter XVI and XVII of IPC or under Chapter V of the

Arms Act. The two registered offences under IPC are certainly under one of the sections falling within Chapter XVI of IPC namely; sections 323, 324 and 332 of IPC. In face of this repetition of criminal activities and commission of repeated offences punishable under Chapter XVI of IPC, the detaining authority was rightly satisfied that the petitioner is a dangerous person.

8. Be that as it may, the petitioner being a bootlegger having twenty cases to his credit under Bombay Prohibitions Act and/or a dangerous person having two cases under IPC to his credit, he can be detained preventively if his activities are found prejudicial for maintenance of public order.

9. Thus, the next point for consideration is whether the activities of the petitioner were prejudicial for maintenance of public order. So far as second para of the grounds of detention is concerned, it recites only general allegations against the petitioner, not supported by any particular incident. Likewise, at page 5 of the English translation of the grounds of detention, general allegations have been made that the petitioner created obstruction whenever police carried out raid at his residence in connection with liquor business. But it has not been specified that out of 20 cases registered against the petitioner whether he created such situation in all the twenty cases or only in some of the cases. Consequently this recital has to be taken as recital of general nature and as it is general recital, it cannot be said that the activities of the petitioner in the aforesaid twenty registered offences were prejudicial for maintenance of public order.

10. Next material on this point is statement of two confidential witnesses. One witness has stated that on 24.12.1998 at 7 p.m., he was passing near Rajpur Tolnaka when the petitioner in the company of his associates was found transporting liquor near Jain Derasar, a public place, a holy place of worship of Jain community. The witness advised the petitioner not to carry out such activities near religious places whereupon the petitioner got excited and abused the witness and threatened him and hit him by fist and kick. The witness shouted for help whereupon people gathered. The petitioner took out weapon and ran towards those people. The people ran helter/skelter and atmosphere of fear prevailed and daily routine of people was disturbed. People felt insecure. The learned AGP contends that this activity of the detenu was confined near the Jain Derasar area, a public place

and a holy place of worship of Jain community which may be said to be a situation prejudicial for maintenance of public order. Needless to say that in a dozen cases decided by me, I have dealt with such activities confined near temple. mosque. educational institutions, graveyard and places of worship of Jain community. Such incidents per se, do not amount to creating situation prejudicial to maintenance of public order. Thus, simply because the petitioner was transporting liquor near Jain Derasar, he cannot be said to have created a situation prejudical for maintenance of public order. The second part of this incident, on careful scrutiny of the statement of the confidential witnesses does not appear to travel beyond the scope of a situation which is prejudical for maintenance of law and order and does not reach the realm of a situation prejudicial to the maintenance of public order. In this incident no apparent injury was caused either to the witness or to the persons who collected at the spot to help the witness. If weapon was shown and the nature of weapon was not specified by the witness in his statement, naturally the people who collected at the spot were likely to rush for safety and if they did so, it cannot be said that such situation was created in which even tempo of life of the locality or community or society was disturbed. Even within the extended meaning of public order as contained in explanation of sub-section (iv) of Section 3 of PASA Act, such activity cannot be termed to be prejudicial to the maintenance of public order. As such the statement of this witness was also not relevant or material for reaching subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order.

11. The second witness has stated about the incident dated 4.1.1999 at 12'O clock in the noon. Here again the same story was repeated except the change of place namely; the petitioner indulged in bootlegging activity near educational institution.

12. For the reasons given in the foregoing portion of this judgment, it can be gainsaid and held that merely because the activity was confined near educational institutions, it cannot be said that a situation prejudicial to maintenance of public order was created. So far as beating of the witness is concerned, no apparent injury was alleged by him. No person who collected to save the witness has also received any injury. Again, for the reasons stated above, it can be said that this activity cannot be said to have created a situation pejudicial for maintenance of public order,

even within the extended meaning of 'public order'. as contained in Explanation under sub-section (iv) of Section 3 of the PASA Act. Thus, after overall consideration of material on record, it can be said that subjective satisfaction of the detaining authority that activities of the petitioner were prejudicial for the maintenance of public order, cannot be sustained and if this is so, the detention order cannot be sustained despite the fact that the petitioner is a bootlegger or a dangerous person. On this ground alone, the detention order is to be quashed.

13. If the detention order can be quashed on this ground alone, it is not necessary to discuss other grounds challenging the detention order. However, since arguments were advanced by the learned Counsel for the petitioner on those grounds, passing reference to all those grounds seem to be desirable.

14. Next attack against the detention order is that the representation dated 24.2.1999 sent by the Advocate of the detenu by Registered post was received by the detaining authority on 25.2.1999. The detention order was passed on 19.2.1999 and as such apparently the State Government could not have approved the detention order on 25.2.1999. From the counter affidavit of the detaining authority, it seems from para 9 that the said representation was received on 5.3.1999 by him and it was forwarded to the State Government on 9.3.1999. The statutory period for approval of detention order by the State Government expired on 2.3.1999. It seems that the detaining authority thought that since the detention order was approved by the State Government, he could not have decided the representation and in this belief he forwarded the same to the State Government. There seems to be some difference amongst the parties regarding the date of receipt of representation dated 24.2.1999 by the detaining authority. In the rejoinder affidavit filed today, it is clear from Annexure 'X' that the Registered letter No.3302 dated 24.2.1999 was delivered to the addressee on 25.2.1999. Xerox copy of the Registered A.D. form and other postal communication has been annexed at page 51. It also shows that registered letter No.3302 dated 24.2.1999 was delivered to the addressee on 25.2.1999. No documentary evidence contrary to this was produced. It is, therefore, established that the representation was received in the office of the detaining authority on 25.2.1999 and it was forwarded to the State Government on 9.3.1999. Before the detention order could be approved on 2.3.1999, the detaining authority had sufficient time to decide the

representation but that was not done. Learned AGP has argued today on the basis of record with her that during this interval, the representation was moving from one table to another hence it reached the detaining authority only on 5.3.1999. Since these facts have not been brought on record by filing detailed affidavit, it cannot be accepted that it did so happen. Moreover, it is not understood what was the necessity for the representation to travel from one table to another between 25.2.1999 and 5.3.1999. Thus, the detaining authority did not consider the representation within the time available at his disposal. He forwarded it after considerable delay on 9.3.1999 to the State Government. Even if he received the representation on 5.3.999 he should have transmitted it immediately but it was not done by him till 9.3.1999. On similar facts, this Court in Special Civil Application No.3802/95 decided on 27.9.1995 held that the delay on the part of the detaining authority in not forwarding representation between February 8, 1995, when it was received by him and 16.2.1995 when it was forwarded to the State Government was fatal and on this ground alone, the detention order was quashed inasmuch as this inaction on the part of the detaining authority vitiated the detention as well as the continued detention of the petitioner. Consequently this is another ground for quashing the detention order.

15. Next contention has been that there was delay in forwarding the representation by the detaining authority to the State Government. It has already been discussed above hence it needs no repetition.

16. Last contention has been that the representation dated 27.2.1999 sent by the brother of the detenu and addressed to His Excellency, the Governor of Gujarat who represents the State of Gujarat, was also not expeditiously considered, rather it was leisurely considered and rejected as late as on 18.4.1999 and it was communicated to the detenu on 19.4.1999. By that time, the writ petition was already filed. Needless to say that the Governor of the State is also considered to be 'State' within the meaning of definition of 'State' contained in the General Clauses Act. If representation was made to the Governor, it should have been expeditiously dealt with. The learned AGP has contended that there was some confusion in the mind of the receiving authority because on the top of the representation, the subject was 'police harassment' and hence it was sent to complaint section and then it travelled from one table to another and was ultimately rejected on 18.4.1999. She, therefore, contended that

there was no delay in disposal of the representation by the State Government. I am unable to accept this contention. There is obvious delay between 27.2.1999 and 18.4.1999 and there cannot be denial of the fact that there was delay in dealing with the representation. The only thing to be seen is whether there is any satisfactory explanation to this delay or not. After considering the affidavit filed by J R Rajput, Under Secretary to the Government, Home Department, who has attempted to explain this delay in para 7 of the counter-affidavit but has miserably failed, it can be said that there is no satisfactory explanation of delay in dealing with such representation. Expeditious disposal of the representation of the detenu made by himself or by his relatives including his brother, wife, etc. is the requirement of law. This requirement of law cannot be bypassed simply by observing that there was some confusion in the mind of the authorities that it was in the nature of complaint against 'police harassment'. After all only these words, complaint against 'police harassment', should not have received attention of the authorities dealing with the representation. They should have gone through the contents of the representation to be satisfied whether it was actually a complaint against police harassment or it was a representation under PASA Act. Admittedly, the representation did go to the PASA section and then after observing necessary formalities it was rejected after considerable delay. This delay which remains unsatisfactorily explained is another ground for quashing the impugned order.

17. For the foregoing reasons, the impugned detention order cannot be sustained. The petition, therefore, succeeds and is hereby allowed. The impugned detention order dated 19.2.1999 is hereby quashed. The petitioner shall be released forthwith unless wanted in any other case.

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msp.